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VIA HAND DELIVERY

W. Kenneth Ferree, Bureau Chief
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RECEIVED

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Re: Applications for Transfer of Control of Hispanic Broadcasting Corp.,
and Certain Subsidiaries, Licensees of KGBT(AM), Harlingen, Texas
et al. (Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL et al.)**

Dear Mr. Ferree:

On March 11, 2003, Univision Communications Inc. ("Univision") responded to a Media Bureau letter of inquiry regarding a minority shareholder right associated with Univision's minority ownership interest in Entravision Communications Corporation ("Entravision"). The right at issue involves Entravision's obligation to obtain Univision's shareholder consent before selling an Entravision television station that is serving as a Univision network affiliate (the "Minority Shareholder Consent"). Because the Minority Shareholder Consent flows from Univision's stock interest in Entravision, Univision is permitted to retain the right only so long as it maintains a required minimum stock investment in Entravision. The Media Bureau's letter of inquiry requested comment on whether the Minority Shareholder Consent right could result in Univision being able to exercise an attributable level of influence over Entravision's television and radio stations, but did not request information on how the merger would be affected were the Minority Shareholder Consent to be deemed an attributable interest.

In its March 11, 2003 response, Univision noted that the Commission had repeatedly held in prior decisions (all of which were contested cases) that rights similar to, or broader than, the Minority Shareholder Consent right do not provide minority shareholders with attributable levels of influence over affiliated broadcast stations. These prior decisions involved both English and Spanish-language stations, and, despite extensive research on the point, counsel is unaware of any Commission decision where a Minority Shareholder Consent right was found to constitute an attributable interest, even in combination with other interests.

Having found no basis in either Commission precedent or the FCC's attribution rules for holding that a Minority Shareholder Consent right can create attributable influence, and there being no facts present here that were not also present in one or more of the Commission cases where a Minority Shareholder Consent right was found to be non-attributable, Univision

conveyed this information to the Commission in its March 11th letter. Univision was not asked and did not address the implications of how a sudden change in Commission attribution policy with regard to Minority Shareholder Consent rights would affect the pending merger. To address this question, as well as to provide information that was not yet available on March 11th, Univision is submitting this follow-up letter to supplement its March 11th letter.

The Minority Shareholder Consent Right Is Categorically Outside Those Interests That Can Create Attributable Influence. As the Commission has stated, “[t]he mass media attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.”¹

Influence over matters that do not involve programming or other core operations is not attributable. Furthermore, the degree of influence targeted by the attribution rules is not just the possibility of any influence, but instead, “[t]he attribution rules are designed to attribute entities that wield *significant* influence on core operations of the licensee.”²

Upon consummation of Univision’s proposed merger with Hispanic Broadcasting Corporation (“HBC”), Univision will hold only non-attributable, non-voting shares in Entravision. In addition, Univision will have only a single minority shareholder right with regard to Entravision as a whole: the right of consent over any merger or liquidation of Entravision. The only other minority shareholder right that will be held by Univision is the Minority Shareholder Consent, which affects only television stations held by Entravision, and, in fact, only those television stations that have chosen to affiliate with Univision. Univision has no similar right (or any other right) with regard to Entravision’s radio stations, and has no

¹ Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest Policy, Report and Order, 14 FCC Rcd 12559 (1999) (“Attribution Order”) at ¶ 1 *citing Attribution of Ownership Interests*, 97 FCC 2d 997, 999, 1005 (1984) *on recon.*, 58 RR 2d 604 (1985) *on further recon.*, 1 FCC Rcd 802 (1986) (“1984 Attribution Order”). See Quincy D. Jones, 11 FCC Rcd 2481 (1995) at ¶ 22 (describing the objective of the Commission’s attribution rules as “to identify those interests in or relationships to an applicant which confer on its holders a degree of ‘influence’ such that holders have ‘a realistic potential to affect the programming decisions of licensees’” and quoting 1984 Attribution Order).

² Attribution Order at ¶ 46 (emphasis added). Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests Review of the Commission’s Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission’s Cross-Interest Policy, Memorandum Opinion and Order, 16 FCC Rcd 1097 (2001) (“Attribution Reconsideration Order”) at ¶ 13 (“attribution extends to relationships that permit *significant* influence over the core operations of a licensee.” (emphasis added)).

programming or other interest in the Entravision radio stations beyond its basic stock interest. Indeed, Univision will be barred by its Consent Decree with the Department of Justice from exercising *any* influence over the Entravision radio stations.

Because the non-voting stock interest is itself non-attributable under the Commission's rules, and because that most basic of all minority shareholder rights – the requirement of shareholder consent to mergers or liquidations – has repeatedly been found by the Commission to be non-attributable, the attribution analysis here must focus on two questions – does the Minority Shareholder Consent right permit Univision to wield significant influence over the “core operating functions” of an Entravision station, and, if so, would Univision's attribution in that station violate the Commission's multiple ownership rules? The answer to both questions is “No.”

The Commission's attribution rules set forth three basic interests that are presumed to confer significant, and therefore attributable, influence over the core operations of a broadcast station:

- Owning greater than five percent of the voting stock of the station's licensee (greater than twenty percent of voting stock for investment companies, insurance companies, and banks);
- Being an officer or director of the station's licensee;
- Holding more than thirty-three percent of the combined debt and equity of the station's licensee if the holder also provides programming to that particular station or has an interest in another media outlet in the same market as that station.³

These bright-line rules specifically target relationships that create the potential for a party to significantly influence the programming or other core operations of a broadcast station. At the time of the proposed merger and thereafter, Univision will not have any such interests in an Entravision radio or television station.

It is also abundantly clear from the Commission's attribution rules that rights regarding the sale of a station (such as the Minority Shareholder Consent), unlike rights affecting day-to-day core operations, are categorically outside those interests that can create attributable influence. Not only does the Commission's multiple ownership rule fail to list any rights restricting a licensee's ability to sell its station as creating attributable influence, but Note 2(f) of Section 73.3555 specifically rejects such a notion, holding that “options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.” *See also KKR Associates, L.P.*, 2 FCC Rcd 7104 (1987) at ¶ 12 (“The Commission has long held that unexercised options to buy do not confer a current ability to exercise influence or control.”). An option is the most restrictive limitation upon the sale of a

³ 47 C.F.R. § 73.3555, Note 2.

station that is possible, since it prevents the licensee from (a) electing to sell its station during the term of the option, (b) allows the optionee to dictate to the licensee when (and if) the station will be sold, as well as (c) to whom the licensee can sell the station. It would be truly surreal if the Commission's rules specifically permit Univision to hold an option on each of Entravision's stations without creating a risk of attribution, but the Commission found that holding only one-third of the rights of an optionee (the ability to prevent the sale of the station during the term of the right) creates attributable influence over the station.

Thus, the Minority Shareholder Consent right, affecting not the core operations of a station, but only the circumstances of its ultimate sale, is categorically outside the types of interests which can create attributable influence. As the Commission has stated, "[w]hile our focus is on the issues of influence or control, at the same time, we must tailor the attribution rules to permit arrangements in which a particular ownership or positional interest involves minimal risk of influence, in order to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry."⁴ The Minority Shareholder Consent is just such an arrangement, negotiated at arm's length by Entravision in return for investment capital from Univision, and the public has benefitted from that arrangement as Entravision has used that capital to grow its television business and provide expanded broadcast service to the public.

The Fact That the Minority Shareholder Consent Right Is Held by a Network Does Not Alter Its Non-Attributable Nature. As the above list of interests that can create attributable influence under the Commission's rules makes clear, the Commission's attribution rules explicitly address interests held by networks in affiliated stations and establish a bright line test for determining whether attribution is appropriate. In the recent case of *Sunburst Media L.P.*, 17 FCC Rcd 1366 (2002), the Commission noted that "[i]n the Broadcast Attribution Proceeding, the Commission sought to identify *all* interests relevant to the underlying purposes of the multiple ownership rules and which should, therefore, potentially be counted in applying those rules." *Sunburst* at ¶ 5 (emphasis in original). In adopting those attribution standards, the Commission explicitly addressed concerns about the possibility of station influence by program suppliers, including broadcast networks, and established the conditions under which such an interest would rise to the level of attribution. See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559 (1999) at ¶¶ 54-60, *recon. granted in part*, 16 FCC Rcd 1097 (2000). In establishing this bright line test,

[t]he Commission explicitly declined to treat network affiliation as a cognizable interest. Instead, the Commission provided that, to the extent it might be appropriate to address concerns about a particular radio or television network

⁴ Review of the Commission's Regulations Governing Attribution of Broadcast Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest Policy, 10 FCC Rcd 3606 (1995) at ¶ 5.

affiliation agreement, the Commission would do so in the context of an equity/debt plus ("EDP") analysis.

Sunburst at ¶ 5 (citations omitted). Thus, a network that holds an interest in an affiliated station is subjected to the lower threshold for attribution created by the Equity/Debt Plus test, but is otherwise treated the same under the Commission's rules as any other investor. Univision demonstrated in its December 9, 2002 letter to the Media Bureau that its 23.8% Equity/Debt Plus ratio is far below the 33% threshold that could create attribution, and its interest in Entravision is therefore non-attributable as a matter of law.

Commission Precedent Has Consistently Found That Rights Held by a Network That Are Similar or Even Broader Than the Minority Shareholder Consent Right Do Not Convey Attributable Influence. As a right affecting only the sale of specific stations, and not their core operations, the Minority Shareholder Consent right creates no attributable influence over any Entravision station, even those television stations to which it applies. Indeed, the sale of a station is emphatically not a core operating function like programming, but is instead an extraordinary corporate action to cease doing business in a particular market. While this conclusion is certainly supported by the above review of the Commission's attribution rules, the Commission's decisions involving network attribution provide an even more precise gauge as to what level of influence is necessary to reach the threshold of attribution. In these decisions, the Commission has repeatedly found that shareholder rights far more extensive than those that exist here are non-attributable, even when combined with other interests that are not present here, such as representation on the Board of Directors.

For example, in *National Broadcasting Company, Inc.*, the Commission held that a network's combination of a forty-nine percent equity interest along with its provision of programming did not create an attributable interest in the licensee of an affiliated station, even where the network also retained a veto power over various business transactions, including the sale of the station or dissolution of the licensee. *National Broadcasting Company, Inc.*, 6 FCC Rcd 4882 (1991).

In just the past year, in *Telemundo Communications Group, Inc.*, 17 FCC Rcd 6958 (2002) ("*Telemundo II*"), the Commission approved the transfer of control of eleven full-power television stations from Telemundo Communications Group, Inc. to NBC. In granting approval for this transfer of control, the Commission reviewed and upheld as non-attributable numerous shareholder rights held by NBC as a minority investor in Paxson Communications Corporation ("*Paxson*"). Despite a laundry list of minority shareholder rights afforded NBC, including (1) the ability to nominate three directors to Paxson's board of directors, (2) *the right to veto the sale of any Paxson station in a top-20 television market*, (3) the right to match any third-party offer for the purchase of a Paxson station, (4) the right to convert any Paxson station to an NBC affiliate, and (5) the right to run pre-empted NBC network programs on Paxson's stations, the Commission stated that "these provisions mirror provisions that we have previously allowed to ensure that non-voting, minority shareholders are able to protect their investments while

avoiding attribution.” *Telemundo II* at ¶ 35 (citations omitted). That conclusion is equally applicable to Univision’s far smaller interest in Entravision.

The comparison between the extensive non-attributable rights permitted to be held by NBC and the two rights Univision proposes to retain in Entravision could not be more startling. As shown in Table 1 herein, NBC not only has both of the rights Univision holds in Entravision (requiring shareholder consent for merger/liquidation and the sale of certain television stations), but also board representation and a long list of additional shareholder and programming rights. Any suggestion that these rights are attributable when held by Univision, but are not attributable when held by NBC, violates not only the fundamental precept of *Melody Music*⁵ that similarly situated applicants be treated similarly, but places Univision at a severe competitive disadvantage, with NBC able to acquire Entravision television stations at will, while Univision is prevented from similarly acquiring Paxson stations because of NBC’s minority shareholder rights.

A similar case that is directly on point is the Commission’s decision in an earlier transfer involving Telemundo Group, Inc. In that case, the Commission approved a transfer of control of Telemundo from its then-existing shareholders to a new entity composed of three parties – Station Partners, LLC, with a 50.1% equity interest, Sony Pictures Entertainment, Inc. with a 24.95% interest, and Liberty Media Corporation (“Liberty”) which held the remaining 24.95% interest. *See Letter from Barbara A. Kreisman to Tom Davidson, Esq., et al.*, dated July 30, 1998 (“*Telemundo I*”). As part of that transaction, Liberty and Sony proposed to jointly own the Telemundo Network, with which all of the Telemundo stations were affiliated. However, because Liberty had cable systems in many of the same markets in which the Telemundo television stations were located, Liberty’s interest in the Telemundo stations had to be non-attributable in order to comply with the TV/Cable Cross-Ownership Rule. Liberty proposed to hold numerous minority shareholder rights with regard to the affiliated television stations, including rights that prevented Telemundo from selling *any* station, *acquiring* any station, or altering *any* station’s network affiliation, while also providing Liberty with representation on the board of directors. The full list of these rights is included in Table 1 herein.

As in *Telemundo II*, the Commission held that these interests, even in combination, did not create an attributable interest, and granted the transfer application. *Telemundo I* at 4. Consistent with the concept that only those interests that permit significant influence over day-to-day operations can create attribution, the Commission held that the “shareholder protections proposed in the application do not give Liberty any power to influence the day-to-day operation management and operations of the TLMD station group and, under Commission precedent, do not cause Liberty’s interest to become attributable.” *Telemundo I* at 4. The facts in the instant situation are indistinguishable from *Telemundo I*, and the limited minority shareholder rights Univision proposes to retain here – consent rights over major corporate actions like merger and

⁵ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

dissolution, and the Minority Shareholder Consent – fall far short of those found to be non-attributable in *Telemundo I*.

Univision notes that petitioner National Hispanic Policy Institute, while failing to present a single precedent suggesting that the Minority Shareholder Consent falls afoul of the Commission's attribution rules, instead argues that Univision's relationship with the stations in which it holds a minority interest is uniquely susceptible to undue influence. It bases this claim on the Commission's prior grant to Univision of a waiver of the rule prohibiting networks from representing their affiliates in national spot advertising sales. The claim that this fact distinguishes the present case from the decisions discussed above is patently false. In *Telemundo I*, Liberty held *the exact same waiver* through its ownership interest in the Telemundo Network, which provided programming to *all* of the Telemundo stations in which Liberty was found to have a non-attributable interest.⁶ Here, Univision is the national spot sales representative for less than half of Entravision's broadcast stations, as Univision represents only the Entravision television stations (and not all of those) and has no role at all in the sale of advertising on the Entravision radio stations.

Similarly, an examination of NBC's rights in *Telemundo II* reveals that NBC's non-attributable interest in the Paxson stations with regard to advertising sales is actually *far greater* than Univision's role as national spot sales representative for some of the Entravision stations. As discussed above, the Commission found NBC's minority interest in the Paxson stations to be non-attributable, despite the fact that most of the Paxson stations had, at the time of the decision, entered into Joint Sales Agreements whereby the sale of substantially all of a Paxson station's advertising time (not just national spots) is handled by the local NBC station. Request for Declaratory Ruling filed by Paxson Communications Corporation, (Dec. 4, 2001) at 6. Thus, even with a far more extensive and intimate involvement than Univision in the advertising sales of the stations in which it holds a minority interest, NBC's interest was still held to be non-attributable. Far from serving as a distinction between the present case and the Commission's decisions in *Telemundo I* and *Telemundo II*, Univision's national spot sales waiver is in fact yet another similarity with those proceedings, and provides additional support for the non-attribution of the Minority Shareholder Consent.

⁶ See Amendment of Sec. 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN) for Waiver of Sec. 73.658(i); Request of Telemundo Group, Inc. for Waiver of Sec. 73.658(i); Request of Latin International Network Corporation for Waiver of Sec. 73.658(i), 5 FCC Rcd 7280 (1990).

Univision's Minority Shareholder Rights in Entravision in Comparison to Other Networks' Minority Interests That Have Been Held to Be Non-Attributable

	NBC/Paxson⁷	Liberty/Telemundo⁸	Univision/Entravision
Board of Directors	Right to nominate three directors	Right to nominate one director, and jointly nominate (with the other minority shareholder) a second director	No right to nominate directors
Minority Shareholder Rights	<ol style="list-style-type: none"> 1. The right to approve the sale of any Paxson station in a top-20 TV market. 2. The right to approve a merger, consolidation, business combination, voluntary bankruptcy, winding-up, or filing for protection under any bankruptcy law. 3. The right to match any third-party offer for the purchase of a Paxson station. 4. The right to convert Paxson stations to NBC affiliates subject to negotiation of NBC affiliation agreements similar to those existing in comparable markets. 5. The right to place on Paxson's stations any NBC network programs that are pre-empted by the local NBC affiliate, subject to a 35-hour per year prime time maximum. 6. The right to have Paxson explore the possibility of co-locating local Paxson and NBC stations. 7. NBC and Paxson are parties to Joint Sales Agreements, Time Brokerage Agreements, and a 	<ol style="list-style-type: none"> 1. The right to approve the sale of substantially all of the assets of any broadcast station, or of any other assets with a price over \$10 million. 2. The right to approve any merger, consolidation, or reorganization of the station group 3. The right to approve any action relating to the station group's termination, dissolution, liquidation, or winding-up. 4. The right to approve any decision by a station group station "to enter into, amend, take any action to terminate, or fail to renew any affiliation agreement (which approval shall not be unreasonably withheld after applying commercial standards of review prevailing among investors in companies comparable to [station group])" 5. The right to approve the initial budget of the station group, and any future budgets if the station group fails to meet certain financial performance standards. 6. The right to approve the station group's issuance of additional debt or equity securities. 	<ol style="list-style-type: none"> 1. The right to approve the sale of only those television stations affiliated with Univision. 2. The right of consent to the merger or liquidation of Entravision.

⁷ See Telemundo Communications Group, Inc., 17 FCC Rcd 6958 (2002); Request for Declaratory Ruling filed by Paxson Communications Corporation, (Dec. 4, 2001).

⁸ See Response to Request for Additional Information filed by Univision Communications Inc., (Mar. 11, 2003) at 4-6.

	<p>National Sales Agreement for the Paxson stations. Under the terms of the Joint Sales Agreements, local NBC-owned or affiliated stations operating in the same markets as Paxson stations sell substantially all local and national advertising on those Paxson stations.</p> <p>8. The right to approve the issuance of additional stock.</p> <p>9. The right to approve additional compensation (above \$400,000 per year) of top Paxson executives.</p> <p>10. Warrants and a call option good for ten years that would allow NBC to acquire additional Paxson stock and the "super voting" control block currently owned by Bud Paxson, if permitted by the FCC's rules.</p> <p>11. The right to approve Paxson's annual budgets, expenditures that would materially exceed budgeted amounts, and amendments to Paxson's budgets.</p> <p>12. The right to approve programming acquisitions, or the development of new programs, that would constitute five percent or more of Pax TV's or certain Paxson stations' broadcast time in a given season.</p> <p>13. The right to approve Paxson agreements intended to exploit Paxson's DTV spectrum on a regional or national basis.</p> <p>14. NBC holds covenants in financing agreements that limit Paxson's ability to incur additional indebtedness</p>	<p>7. The right to approve "[a]ny substantial change in the nature and scope of [the station group's] Spanish language broadcast business or the acquisition of an additional broadcast station or other substantial business."</p> <p>8. The right to approve any step toward a station group bankruptcy, insolvency, or similar filing.</p> <p>9. The right to approve any related party transaction between a station and the station group, its stockholders, or its affiliates, except for transactions between the station group and the Telemundo Network, which Liberty and the other minority shareholder would jointly own.</p>	
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As this table demonstrates, the minority interest Univision proposes to retain in Entravision is paltry in comparison to those previously found not to confer an attributable level of influence, and there is no basis for altering here the Commission's well-established rules and precedent regarding the non-attribution of such interests.

While Conflicting With Existing Law and Precedent, a Declaration That Univision's Provision of Programming to Entravision Television Stations Creates Attribution When Combined With the Minority Shareholder Consent Right Would Have No Impact Upon the Proposed Merger's Compliance With the Commission's Multiple Ownership Rules. The Media Bureau's March 10th letter of inquiry appears to suggest that Univision's role as program supplier to many Entravision television stations, in combination with the Minority Shareholder Consent affecting the sale of those stations, raises concerns as to whether Univision might be in a position to exercise attributable influence over Entravision stations. As discussed extensively above and in Univision's March 11th letter, Univision's proposed interest in Entravision's stations falls squarely within the Commission's boundaries for non-attributable interests, and its application treads upon no novel ground in that regard.

However, were the Commission to attempt to change course and declare these rights to be attributable, such a ruling would not impact the proposed merger's compliance with the Commission's multiple ownership rules. As the Commission made clear in 2001 when reconsidering its attribution rules, where a claim of attribution is based not upon the size of a party's basic stock interest, but upon a "triggering relationship," such as being the station's program supplier,

[w]e clarify that the investor in the foregoing case will not automatically hold an attributable interest under the EDP rule in all of the stations or media outlets owned by or licensed to the multiple-station owner. Rather, the investor will have an attributable interest under the EDP rule only in those stations or media outlets owned by or licensed to the multiple-station owner where the investor meets the triggering relationship prong of the EDP rule, i.e., the investor is a major program supplier to a station owned by the multiple-station owner, or the investor is a same-market media entity.⁹

As discussed above, Univision's interest in Entravision falls far below the 33% Equity/Debt Plus threshold and is therefore not attributable. However, to the extent that the Media Bureau's letter of inquiry implicitly makes the novel suggestion that the presence of two "triggering relationships" (i.e., that of program supplier and holder of the Minority Shareholder Consent) can create attribution *in spite of* the limited size of the stock interest, the Commission's language above makes clear that attribution would only exist in those stations with which those triggering relationships exist.

In the present case, both the program supplier and Minority Shareholder Consent relationships apply only to those Entravision television stations that are affiliated with Univision. Neither relationship exists with regard to Entravision's non-Univision television stations, nor with any of Entravision's radio stations. As Univision currently has an attributable interest in all Entravision television stations (since it continues to hold its voting stock in Entravision until

⁹ Attribution Order on Reconsideration, 16 FCC Rcd 1097 (2001) at ¶ 37.

consummation of its merger with HBC), the Commission has ruled on multiple occasions that the combination of Univision's and Entravision's television stations complies with the Commission's multiple ownership rules. Under both the Commission's existing and recently-announced multiple ownership rules, Univision can continue to maintain an attributable interest in both its own and Entravision's television stations. Similarly, combining attributable interests in the Univision and Entravision television stations with an attributable interest in HBC's radio stations also complies with the Commission's existing multiple ownership rules, as well as with the recently-announced multiple ownership rules that actually loosened the Commission's TV/radio cross-ownership limits.

As a result, declaring Univision to have an attributable interest in the Entravision television stations with which it has affiliated would not create a violation of either the old or new rules. Accordingly, should the Commission conclude, despite prior precedent, that being a program supplier and holding a Minority Shareholder Consent right creates an opportunity for Univision to influence the core operations of the affected Entravision television stations, then, at worst, it can declare Univision to be attributable in those stations and promptly approve the merger as proposed.

Univision's Consent Decree With the Department of Justice Ensures That Univision Cannot Exercise Influence Over the Entravision Radio Stations. As discussed above, Univision has *no* relationship with Entravision's radio stations, either as a programmer, seller of advertising, or otherwise. Univision's sole connection with the Entravision radio stations is through its basic stock ownership interest and its consent right regarding the merger or liquidation of Entravision itself. Univision therefore has absolutely no capability to exercise any attributable influence over the Entravision radio stations and its non-voting interest will be *per se* non-attributable under the Commission's rules.

While the Commission typically is forced to rely on structural protections, which ensure that a non-attributable investor lacks the ability to significantly influence the day-to-day operations of a station (and Univision's interest in Entravision clearly complies with those structural limitations), after filing its March 11th letter, Univision entered into a Consent Decree with the Department of Justice regarding the merger that restricts its activities relating to Entravision. The Consent Decree places strict limitations on Univision's involvement with Entravision, providing the Commission with unprecedented assurances that Univision will exercise no significant influence over the Entravision radio stations.

Pursuant to the Consent Decree, Univision must gradually divest a portion of its interest in Entravision such that by March 26, 2006, it will hold no more than fifteen percent of the outstanding shares of Entravision, and by March 26, 2009, it will hold no more than ten percent of Entravision shares. This six-year timeline for the gradual divestiture of stock in Entravision was agreed to by Univision and the Department of Justice in order to avoid the harm Entravision would suffer from a more rapid sale of Univision's Entravision stock.

The Consent Decree goes far beyond these basic stock reduction requirements, explicitly prohibiting Univision from engaging in a wide variety of activities, including:

“using or attempting to use any ownership interest in Entravision to exert any influence over Entravision in the conduct of Entravision’s radio business;”

and

“using or attempting to use any rights or duties under any television affiliation agreement or relationship between Univision and Entravision (including any duties Univision may have as national television sales representative for Entravision), to influence Entravision in the conduct of Entravision’s radio business.”

Consent Decree at 6-7, attached hereto.

The fact that the Commission has previously found the minority interests here to be non-attributable demonstrates that Univision will hold no attributable influence in any part of Entravision and that the proposed merger complies with all Commission rules. However, the additional restrictions imposed by the Consent Decree – restrictions that were not present in the attribution cases cited above – ensure beyond doubt that Univision *cannot* and *will not* exercise anything approaching an attributable level of influence over Entravision, particularly with regard to Entravision’s radio stations – the only broadcast interest here that would be limited by the Commission’s multiple ownership rules. By its terms, the Consent Decree remains in effect for ten years and applies to Univision and HBC, both individually and jointly. Should Univision breach the terms of the Consent Decree, it could result in the conviction of its directors, executives, and employees for contempt of court, with the risk of imprisonment. These and other behavioral restrictions in the Consent Decree, in addition to the structural restrictions normally deemed sufficient for non-attribution by the Commission, provide the Commission with an unmatched assurance that Univision will be exercising absolutely *no* influence over Entravision’s radio stations, and no attributable influence over the rest of Entravision’s stations.

There Is No Basis for Presuming the Parties Will Not Comply With Their Commitments to the Commission. While the Commission’s Rules and precedent make clear that Univision’s interest in Entravision will not confer attributable influence over Entravision, Univision has also represented to the Commission that it will not attempt to exercise such influence over Entravision. While the petitioner in this proceeding has provided the Commission with mountains of baseless speculation as to how it believes Univision will comport itself after the merger, those assertions are just that – speculation. In reviewing proposed transactions, the Commission does not traffic in speculation, and has repeatedly stated that “the Commission does not, as a general matter, assume that our permittees, licensees and applicants will fail to comply with our rules.” Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999) at ¶ 85, *citing News International*,

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PLC, 97 FCC 2d 349, 356-358 (1984). Accordingly, it is presumed that licensees will operate in a manner consistent with the limitations of the Commission's Rules:

"[P]etitioners are essentially asserting that in the future the Buyer will be operated or controlled in a manner inconsistent with our requirements or with the representations made by the Buyer in the applications and in affidavits. In the absence of properly supported specific allegations of fact to support a contrary conclusion, we do not assume that any applicant 'will not faithfully carry out its representations or that [an applicant] will be operated or controlled in a manner that differs from the [transaction] under consideration.'" Univision Holdings, Inc., 7 FCC Rcd 6672 (1992) at ¶ 16, *quoting* News International, PLC, 97 FCC 2d 349, 356 (1984).

The sole petitioner herein has failed to produce even a whisper of "properly supported specific allegations of fact" to question Univision's commitment to operate consistent with the law and its proposed ownership structure. In fact, Univision has an excellent record in meeting its obligations as a Commission licensee, and an enviable record of providing public service to its local communities, as attested by the large number of letters to the Commission from community groups supporting the proposed merger. It would be fundamentally unfair and harmful to the public to require Univision to modify the Minority Shareholder Consent, which ensures the continued viability of the nation's largest minority-oriented television network, as the price to be paid for attempting to expand that excellent record of community service into minority-oriented radio. There is neither a basis nor benefit to such an action, and Univision respectfully requests that its application be promptly processed and afforded no different treatment than that previously given its network and station competitors.

Sincerely,

A handwritten signature in black ink, reading "Scott R. Flick". The signature is written in a cursive, flowing style with a large initial 'S'.

Scott R. Flick

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
John Rogovin
James Bird
Robert H. Ratcliffe
David Brown

Enclosure

ATTACHMENT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNIVISION COMMUNICATIONS INC.,

and

**HISPANIC BROADCASTING
CORPORATION,**

Defendants.

Civil Action No. CV03-

Judge:

03 0758

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on March 26, 2003, alleging that defendants, Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corporation ("HBC"), violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and plaintiff and defendants, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or an admission by, any party with respect to any issue of fact or law;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain

divestiture of certain rights or assets by, and the imposition of related injunctive relief against, the defendants to ensure that competition is not substantially lessened;

AND WHEREAS, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. "Univision" means defendant Univision Communications Inc., a Delaware corporation with its principal place of business in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "HBC" means defendant Hispanic Broadcasting Corporation, a Delaware corporation with its principal place of business in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Entravision" means Entravision Communications Corporation, a Delaware corporation with its principal place of business in Santa Monica, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Divestiture Assets" means that portion of the Entravision Holdings required to be divested under this Final Judgment.

E. "Entravision Holdings" means any equity interest, whether voting or nonvoting, of Entravision that defendants own or control, directly or indirectly, including, but not limited to, the 21,983,392 shares of Entravision's Class C common shares and the 14,943,231 shares of Entravision's Class A common shares owned by Univision as of the date of the filing of this Final Judgment.

F. The "Univision/HBC Merger" means the Agreement and Plan of Reorganization dated June 11, 2002, by and among Univision and HBC under which Univision will acquire 100 percent of the voting securities of HBC.

G. "Own" means to have or retain any right, title, or interest in any asset, including any ability to control or direct actions with respect to such asset, either directly or indirectly, individually or through any other party.

H. "Overlap Markets" are the following Metro Survey Areas: Dallas, Texas; El Paso, Texas; Las Vegas, Nevada; McAllen-Brownsville-Harlingen, Texas; Phoenix, Arizona; and San Jose, California. A Metro Survey Area is a geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating radio audience size composition.

III. APPLICABILITY

This Final Judgment applies to Univision and HBC, both individually and jointly, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. EXCHANGE OF ENTRAVISION SHARES

A. Univision is hereby ordered and directed, prior to closing of the Univision/HBC Merger, to exchange all of its Entravision Class A and Class C common stock for a nonvoting equity interest with rights and restrictions as specified in the Certificate of Designations, Preferences and Rights of Series U Preferred Stock (attached hereto as Schedule A and made a part of this Final Judgment).

B. Univision is hereby ordered and directed, prior to closing of the Univision/HBC Merger, to provide written certification and supporting documentation to plaintiff that all voting and director rights associated with Entravision's Class C common shares contained in Entravision's First Restated Certificate of Incorporation, dated July 24, 2000, and Entravision's Second Amended and Restated Bylaws, dated July 11, 2002, have been eliminated.

V. DIVESTITURE OF ENTRAVISION HOLDINGS

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, on or before three (3) years from the date of filing of this Final Judgment, to divest that portion of the Entravision Holdings sufficient to cause defendants to own no more than fifteen (15) percent of all outstanding shares of Entravision on a fully converted basis. On or before six (6) years from the date of filing of this Final Judgment, defendants shall divest that portion of the Entravision Holdings sufficient to cause defendants to own no more than ten (10)

percent of all outstanding shares of Entravision on a fully converted basis.

B. Defendants are enjoined and restrained from the date of the filing of this Final Judgment until the completion of the divestitures required by Section V.A from acquiring, directly or indirectly, any additional shares of Entravision stock, except pursuant to a transaction that does not increase defendants' proportion of the outstanding equity of Entravision, such as a stock split, stock dividend, rights offering, recapitalization, reclassification, merger, consolidation, or corporate reorganization. Any additional Entravision equity acquired by defendants as specifically permitted in this Section V.B shall be part of the Entravision Holdings and be subject (1) to the divestiture obligations of Section V.A of this Final Judgment; and (2) to the rights and restrictions set forth in Section IV.A and embodied in the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

C. Upon completion of the divestitures required by Section V.A, defendants may acquire additional shares of Entravision, but defendants are enjoined and restrained from owning any more than ten (10) percent of all outstanding shares of Entravision on a fully converted basis. Any additional Entravision shares acquired by defendants shall be subject to the rights and restrictions set forth in Section IV.A and embodied in the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

D. The divestitures required by Section V.A may be made by open market sale, public offering, private sale, repurchase by Entravision, or a combination thereof. Such divestitures shall not be made by private sale or placement to any person who provides Spanish-language radio broadcasting services other than Entravision unless plaintiff, in its sole discretion, shall otherwise agree in writing.

E. Univision shall notify plaintiff no less than sixty (60) calendar days prior to the expiration of each of the time periods for the divestitures required by Section V.A of this Final Judgment of the arrangements it has made to complete each required divestiture in a timely fashion.

VI. ENTRAVISION GOVERNANCE

A. From the date of the filing of this Final Judgment and until its expiration, defendants are enjoined and restrained, directly or indirectly, from:

1. suggesting or nominating, individually or as part of a group, any candidate for election to Entravision's Board of Directors, or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee, or in a comparable position with or for Entravision;
2. participating in, being present at, or receiving any notes, minutes, or agendas of, information from, or any documents distributed in connection with, any nonpublic meeting of Entravision's Board of Directors or any committee thereof, or any other governing body of Entravision. For purposes of this provision, the term "meeting" includes any action taken by consent of the relevant directors in lieu of a meeting;
3. voting or permitting to be voted any Entravision shares that defendants own, provided, however, that Univision shall have the right to vote on matters arising under the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock;
4. using or attempting to use any ownership interest in Entravision to exert any

influence over Entravision in the conduct of Entravision's radio business;

5. using or attempting to use any rights or duties under any television affiliation agreement or relationship between Univision and Entravision (including any duties Univision may have as national television sales representative for Entravision), to influence Entravision in the conduct of Entravision's radio business; and
6. communicating to or receiving from any officer, director, manager, employee, or agent of Entravision any nonpublic information regarding any aspect of defendants' or Entravision's radio business, including any plans or proposals with respect thereto. Nothing in this prohibition, however, is intended to prevent: (1) Entravision from advertising its radio business on defendants' stations or to prevent defendants from advertising on Entravision's stations; (2) joint promotions between Entravision and defendants and communications regarding the same; (3) Univision from hiring Entravision personnel or Entravision from hiring Univision personnel; and (4) nonpublic communications regarding industry-wide issues or possible potential business transactions between the two companies provided that such communications do not violate the antitrust laws or any other applicable law or regulation.

B. Defendants are enjoined and restrained from preventing, or attempting to prevent, Entravision from making any changes in any corporate governance documents (including its First Restated Certificate of Incorporation and Second Amended and Restated Bylaws) to implement the prohibitions contained in Section VI.A.

C. Defendants are enjoined and restrained from exercising the rights contained in Section D(i) of the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock except in connection with a decision by Entravision to merge, consolidate or otherwise reorganize Entravision with or into one or more entities which results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.

VII. PERMITTED CONDUCT

A. Nothing in this Final Judgment shall prohibit individual managers, agents, and employees of defendants, other than individual directors and officers of defendants, from holding, acquiring, or selling shares of Entravision stock solely for personal investment, and any shares so held will not be subject to the requirements of Sections IV and V of this Final Judgment.

B. Nothing in this Final Judgment shall prohibit individual directors or officers of defendants from continuing to hold, sell, or otherwise dispose of shares of Entravision stock acquired prior to the filing of this Final Judgment and held solely for personal investment, and any shares so held will not be subject to the requirements of Sections IV and V of this Final Judgment. Individual directors and officers of defendants shall not acquire any additional shares of Entravision stock after the filing of this Final Judgment.

C. Nothing in this Final Judgment shall prohibit defendants from agreeing with Entravision to terminate the rights under Section D of the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

D. Nothing in this Final Judgment shall prohibit defendants from entering into a

transaction in which Univision would acquire a majority of the voting securities of Entravision so long as the transaction is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a; provided however, that Univision shall not acquire or retain any direct or indirect interest in Entravision's radio assets in any of the Overlap Markets as part of that transaction without the approval of plaintiff, in its sole discretion.

VIII. GENERAL POWERS AND DUTIES OF THE TRUSTEE

In the event that plaintiff, in its sole discretion, determines (a) that, upon receipt of the notice called for in Section V.E, defendants have not made arrangements that will result in completion of any divestiture within the time limits specified in Section V.A, or (b) that defendants have not completed any of the divestitures required in Section V.A within the specified time limits, the Court shall, upon application of plaintiff, appoint a trustee selected by plaintiff to effect such divestiture. Plaintiff may request, and the Court may appoint, a trustee before any of the time periods for divestiture specified in Section V.A expire. The following provisions apply to the trustee:

A. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to an acquirer(s) acceptable to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, and shall have such other powers as the Court shall deem appropriate. The trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

B. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Sections VIII.E and F.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with incentives based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to all information held by defendants relating to the Divestiture Assets. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

E. After his or her appointment becomes effective, the trustee shall file monthly reports with the Court and plaintiff, setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public

docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets by means of private sale or placement, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

F. If the trustee has not accomplished such divestitures within sixty (60) calendar days after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee at the same time shall furnish such reports to plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

IX. COMPLIANCE

A. Defendants shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of filing of this Final Judgment, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of current and proposed

activities to ensure compliance with this Final Judgment. In the event that individual is unable to perform his or her duties, defendants shall appoint, subject to plaintiff's approval, a replacement Antitrust Compliance Officer within five (5) working days. Should defendants fail to appoint a replacement acceptable to plaintiff within this time period, plaintiff shall appoint a replacement.

B. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

- (1) distributing within forty-five (45) days of the filing of this Final Judgment, a copy of this Final Judgment to each current director and each current officer, and obtaining within ninety (90) days from the filing of this Final Judgment and retaining for the duration of this Final Judgment, a written certification from each such director or officer that he or she: (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.
- (2) distributing within forty-five (45) days of the filing of this Final Judgment, a copy of this Final Judgment to each employee and any manager of any such employee who has any responsibility for or authority over the sale of advertising time on radio stations, and obtaining within ninety (90) days from the filing of this Final Judgment and retaining for the duration of this Final Judgment, a written certification from each such employee or manager that he or she: (a) has received this Final Judgment and has read, understands, and agrees to abide by the terms of

Section VI of this Final Judgment; (b) understands that failure to comply with Section VI of this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of Section VI of this Final Judgment that has not been reported to plaintiff.

- (3) obtaining, within thirty (30) days from the time of such succession, a written certification from each director or officer identified in Section IX.B.1 who succeeds to such a position that he or she: (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.
- (4) obtaining, within thirty (30) days from the time of such succession, a written certification from each employee or manager identified in Section IX.B.2. who succeeds to such a position that he or she: (a) has received this Final Judgment and has read, understands, and agrees to abide by the terms of Section VI of this Final Judgment; (b) understands that failure to comply with Section VI of this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of Section VI of this Final Judgment that has not been reported to plaintiff.
- (5) obtaining annually thereafter, and retaining for the duration of this Final Judgment, a written certification from (a) each director; (b) each officer with responsibility for or authority over the sale of advertising time on radio stations;

(c) the individual or individuals with primary operational responsibility for the Univision Television Group (currently the co-Presidents of UTG); and (d) the individual or individuals with primary supervisory responsibility for National Sales within the Univision Television Group (currently the Senior Vice President of National Sales for UTG), that he or she: (i) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (ii) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (iii) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

C. Within sixty (60) days of filing of this Final Judgment, defendants shall certify to plaintiff that it has: (1) designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (2) distributed the Final Judgment in accordance with Section IX.B.1 and 2.

D. For the term of this Final Judgment, on or before each annual anniversary of the date of its filing, defendants shall file with plaintiff a statement as to the fact and manner of its compliance with the provisions of Sections V, VI, and IX.B, including a statement of the percentage of all outstanding shares of Entravision owned by defendants.

E. If the Antitrust Compliance Officer or any of defendants' directors, officers, or employees learn of any violation of this Final Judgment, defendants shall: (1) within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and (2) within ten (10) business days notify plaintiff of any such violation and the actions taken with respect to it.

X. PLAINTIFF'S ACCESS AND INSPECTION

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

- (1) access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all records and documents in its possession or control relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, defendants' directors, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by plaintiff to any person other than an authorized representative of the executive

branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this *Final Judgment* to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

XII. EXPIRATION OF FINAL JUDGMENT

Unless extended by this Court, this Final Judgment shall expire ten (10) years from the date of its entry.

XIII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

DATED: _____

Court approval subject to
the Antitrust Procedures and
Penalties Act, 15 U.S.C. § 16.

United States District Judge